

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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A.F.,

Plaintiff,

COMPLAINT

-against-

THE DIOCESE OF BUFFALO; QUEEN OF HEAVEN ROMAN
CATHOLIC CHURCH,

Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, A.F., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when she was a minor, was sexually assaulted by Father Robert D. Moss, a Priest of the Diocese of Buffalo, and Queen of Heaven Church.

Parties, Jurisdiction and Venue

1. Plaintiff, A.F., is a citizen and resident of the State of New York. Plaintiff brings this Complaint using her initials because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and further psychological damage if her identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, Diocese of Buffalo (hereafter, the “Diocese” or the “Diocese of Buffalo”), is a religious non-profit corporation, institution and/or organization with principal offices located at 795 Main St., Buffalo, NY, 14203. The Diocese of Buffalo controls all Catholic religious, pastoral and educational functions in the counties of Erie, Niagara, Genesee, Orleans, Chautauqua, Wyoming, Cattaraugus, and Allegany, New York. The Diocese operates and controls approximately 166 parishes and 67 schools.

3. Defendant Queen of Heaven Roman Catholic Church is a Church and Parish located in West Seneca, New York, within the territory of the Diocese of Buffalo. Queen of Heaven Roman Catholic Church operates a school known as Queen of Heaven School. (Hereafter, Queen of Heaven Roman Catholic Church, Parish and School is referred to as “Queen of Heaven” or the “Church”). At all relevant times, Queen of Heaven was operated under the Diocese of Buffalo’s authority and control.

4. Father Robert D. Moss at all relevant times was a Priest of the Diocese of Buffalo, subject to its supervision and control. The Diocese assigned Father Moss to Queen of Heaven.

5. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

6. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

7. Venue of this action lies in Erie County as a substantial part of the events or omissions giving rise to the claim occurred in Erie County or one of the Defendants resides in Erie County.

Duty

8. At all material times, the Diocese was in a special relationship with Plaintiff as a parishioner and student in one of its parochial schools, with whom its ordained Priests would have contacts in the course of engaging in Catholic education and other religious and pastoral activities. Based on this special relationship, the Diocese owed Plaintiff a duty of reasonable care to protect her from foreseeable harm.

9. At all relevant times, the Diocese and Father Moss were in a special relationship of employer – employee, such that the Diocese owed a duty to control Father Moss to prevent foreseeable harm.

10. At all relevant times, the Church and Father Moss were in a special relationship of employer – employee, such that the Church owed a duty to control Father Moss to prevent foreseeable harm.

11. At all relevant times, the Church and Plaintiff were in a special relationship as church-parishioner and school-student, such that the Church owed a duty of care to protect Plaintiff from foreseeable harm.

12. The Diocese and Church each owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while she was under the care, custody or in the presence of Father Moss.

13. The Diocese and Church each owed a duty to exercise reasonable care in the hiring, retention and supervision of Father Moss.

14. The Diocese owed a duty in transferring or assigning Father Moss to prevent or avoid foreseeable harm to parishioners, students and others who would have contacts with Father Moss.

Facts of Sexual Abuse

15. Plaintiff is from a devout Catholic family. She was a student at Queen of Heaven School, and her family attended services and other functions at Queen of Heaven Church. At the Church and the School they encountered Father Moss, who was gregarious and friendly with the parishioners and students.

16. Father Moss inexplicably called Plaintiff by the name of "Katy" even though that was not her real name and no one else called her by that name.

17. Father Moss groomed Plaintiff and her family and gained their trust. Plaintiff and her family considered Father Moss their family Priest.

18. On many occasions, Father Moss "tickled" Plaintiff on her body under the pretext of acting playfully with her. When he did so, he intentionally touched her breasts and vagina over her clothes.

19. When Plaintiff was approximately 12 years old, in or about 1983, she was a member of the Junior Legion of Mary, a Catholic organization for the spiritual development of children. Meetings for this organization were held at the Queen of Heaven School or at Trocaire College in Buffalo. The organization held curia meetings monthly, and Father Moss led these meetings. On an evening in December at Trocaire College, as the curia meeting was concluding, Father Moss singled out and directed Plaintiff, addressing her as "Katy," to stay and assist him in cleaning up. In doing so, he excluded other children in the group who had indicated their willingness to stay for this purpose. As a result, Father Moss and Plaintiff were left one-on-one together in the building.

20. After finishing their work, Father Moss walked with Plaintiff down a dark hallway. At one point, Father Moss told Plaintiff to stop and that he had a present for her. Plaintiff stopped,

standing next to Father Moss. He handed her a large candy cane, and told her, “now you have to thank me.” He then sexually assaulted Plaintiff in the hallway, which included, as examples, forced kissing with his tongue down Plaintiff’s throat; pressing his body against hers so that she could feel his erect penis; and frottage.

Notice-Foreseeability

A. Father Moss’s Sexual Propensity

21. Upon information and belief, Father Moss sexually molested other female children as a priest before and during his assignment to Queen of Heaven. Upon information and belief, the Diocese assigned Father Moss from Queen of Heaven to another parish in the Diocese in or about 1983-1984 in response to allegations or suspicions of child sexual abuse by Father Moss.

22. At all relevant times, the Diocese and the Church knew or in the exercise of reasonable care should have known that Father Moss had a propensity for the conduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

23. At all relevant times, it was reasonably foreseeable to the Defendants that Father Moss would commit acts of child sexual abuse or assault on a child.

24. At all relevant times, the Defendants knew or should have known that Father Moss was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

25. With such actual or constructive knowledge, the Defendants provided Father Moss unfettered access to Plaintiff and gave him the opportunity to commit foreseeable acts of child sexual abuse or assault.

B. Diocese's Concealment of Acts of Sexual Abuse by Priests

26. The Bishop of the Diocese at all relevant times knew that Priests of the Diocese, under his supervision and control, were grooming and sexually molesting children with whom the Priests would have contact in their ministry and pastoral functions. At all relevant times, the Bishop knew that this was a widespread, ubiquitous and systemic problem in the Diocese, involving many Priests and numerous victims.

27. In or about March, 2018, the Diocese released a list of approximately 78 priests of the Diocese against whom credible allegations of child sexual abuse had been made. These priests are acknowledged to have abused children within the Diocese of Buffalo over decades. The list includes the name of Robert Moss.

28. Despite receiving credible allegations of child sexual abuse against Priests, the Diocese acted to conceal these allegations in an effort to avoid scandal and accountability.

29. This concealment was in accordance with a policy of the Diocese, as agent, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Bishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Bishop of the Diocese, to use when a cleric abused children using the confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

30. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy

Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail." *Crimen Sollicitationis* at paragraph 24.

31. The 1962 document reinforced that the Holy See and its agents to whom the document was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

32. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

33. Fr. Fitzgerald's reports were kept secret under the Holy See's standing policy to avoid scandal at all costs. Its recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including the Diocese, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

34. The Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy

See and its agents, including the Diocese, knowingly allowed, permitted and encouraged child sex abuse by the Diocese's Priests.

35. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move offending priests to other locations once they have been determined to be "delinquent." In response to allegations, the document mandates that supplementary penalties include: "As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place." *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

36. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including the Bishop of the Diocese, in 1988 and 2001.

37. The policies and practices of the Diocese designed to conceal sexual abuse by clergy and protect it from scandal and liability included the following:

- (a) transfer and reassignment of clergy known or suspected to abuse children to deflect attention from reports or allegations of child sexual abuse;
- (b) concealing from parishioners and even other clergy that a priest assigned to their parish posed a danger of sexual abuse to children;
- (c) failing to alert parishioners from the Priest's prior assignments that their children were exposed to a known or suspected child molester;

(d) failing to report sexual abuse to criminal authorities; and

(e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the Catholic community, for the purpose of avoiding scandal and public scrutiny.

38. Upon information and belief, the Diocese's assignments, transfers and reassignments of Father Moss were pursuant to this policy and practice designed to conceal sexual abuse of clergy and protect the Diocese from scandal.

39. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See and Diocese believed it to be perceived as a perquisite, which it condoned and used to its advantage in controlling Priests.

40. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic and church-related activities in close proximity to or with Catholic clergy.

41. The Diocese was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of its Priests to sexually abuse children.

42. At all relevant times, while the Diocese had special and unique knowledge of the risk of child sexual abuse by its Priests, such Priests who would prey on children were outside the reasonable contemplation of the Catholic community and families who trusted Priests to have access to their children.

43. Plaintiff had no opportunity to protect herself against a danger that was solely within the knowledge of the Diocese.

44. The Diocese knew a significant percentage of Priests were using their status and position to identify, recruit, groom and sexually assault vulnerable children in the Church.

45. All children engaging in Catholic activities within the Diocese were in this manner placed at risk of child sexual abuse.

Breach

46. During the time Plaintiff was sexually assaulted by Father Moss, the Defendants knew or should have known that Father Moss posed a foreseeable risk of sexual assault to children with whom he would have contact and opportunity.

47. With this knowledge, the Defendants breached their duties by (i) retaining Father Moss as a Priest with unfettered access to children; (ii) failing to adequately supervise Father Moss as an active Priest of the Diocese; and (iii) granting and maintaining Father Moss faculties or authorization to act as Priest without making any warning or notice of his perverse sexual proclivities to the Catholic faithful who would have contacts with Father Moss.

48. At all relevant times, the Defendants had inadequate policies and procedures to protect children from pedophile clergy.

49. The Defendants concealed its knowledge that priests were unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by its Priests in general and Father Moss in particular.

50. The Defendants failed to warn Catholic families that their children were at risk of sexual abuse by Priests in general and Father Moss in particular.

51. As a direct and proximate cause of the foregoing breaches of duty, Father Moss sexually assaulted Plaintiff.

Nature of Conduct Alleged

52. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of

the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

53. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendant acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Father Moss, to retain Father Moss in ministry with unfettered access to children.

COUNT I
NEGLIGENCE
(Against Diocese)

54. Plaintiff A.F. repeats and realleges Paragraphs 1 through 53 above.

55. As a direct and proximate result of the Diocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

56. The Diocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of A.F. and other children.

WHEREFORE, Plaintiff demands judgment against the Diocese for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE
(Against Church)

57. Plaintiff A.F. repeats and realleges Paragraphs 1 through 53 above.

58. As a direct and proximate result of the Church's negligence, Plaintiff has suffered

and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

59. The Church's acts and conduct shows a reckless or willful disregard for the safety and well-being of A.F. and other children.

WHEREFORE, Plaintiff demands judgment against the Church for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
November 22, 2019

Respectfully submitted,

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